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IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 391 of 1992

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
 5. Whether it is to be circulated to the Civil Judge? : NO

SHRI.PREMSHANKAR M.JOSHI

Versus

DISTRICT PRIMARY EDUCATION

Appearance:

MR AJ SHASTRI for Petitioner
MR KH BAXI for Respondent No. 1
None present for other Respondents

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 10/11/2000

ORAL JUDGEMENT

Heard the learned counsel for the parties.

2. The petitioner, a teacher of the Sihor Taluka

Panchayat, Bhavnagar District by this petition under Article 226 of the Constitution is praying for issuance of a writ of mandamus and/or any appropriate writ, order or direction, directing the respondents to place the petitioner in the pay scale of Rs.400/- with deemed date and grant all differential and consequential benefits leading to the same forthwith. Interest on the arrears has also been claimed by the petitioner.

3. This claim has been made on the basis of the Government notification dated 16th September, 1976 which has been issued in exercise of powers conferred by subsection (3) of section 20 of the Bombay Primary Education Act, 1947. The Government of Gujarat in its Notification No.K/SH/852/PTP/1175/K dated 2nd December, 1975 and appended to this notification and more particularly Entry No.3 appearing therein has been ordered to be deleted and following new entries were ordered to be substituted.

Sr. Designation Present Revised Remarks
No. Scale. Scale.

3. Trained Pri- Nil Rs.400-15- (1) Selection
mary Teachers 490-EB-15- grade will be
(selection 520-20-600 awarded to
grade). those trained

Primary
teachers who
have completed
15 years of
service.

(2) 20% of the

total
sanctioned
posts of
primary
teachers may be
awarded
selection
grade.

3. As per the case of the petitioner, he was entitled for selection grade which is awarded to those trained primary teachers who have completed 15 years of services. It is further ordered by this notification that 20% of total sanctioned posts of primary teachers may be awarded selection grade. It is the case of the petitioner that he was a trained primary teacher and he is entitled for this selection grade aforesaid but his case was not

considered what to say to award the selection grade to him.

4. In rejoinder to the special civil application, the petitioner stated that two persons junior to him namely, Mr. A.C. Mehta and Mr. K.H. Purohit have been given the selection grade but the senior has been denied. Another reference has been made to the case of N.N. Shah, a teacher of Sihor who has been though once refused the selection grade but later on he was given the same. Learned counsel for the petitioner submitted that when the junior person was given the selection grade, it is clear that the posts were available of the selection grade and the petitioner's claim has not been considered. Sur-rejoinder has not been filed by the respondent. Prima-facie what it is contended by the petitioner's counsel seems to be correct. In reply to the special civil application, the respondent-District Panchayat has failed to show any justification for this alleged discriminatory treatment to which the petitioner was subjected.

5. The interest of justice will be served in case this petition is disposed of in terms that the District Primary Education Officer, District Panchayat Bhavnagar shall treat this petition as representation of the petitioner and consider his case for selection grade from the deemed date. Where the petitioner is found entitled and eligible for the selection grade then the same may be granted to him from the deemed date i.e. from the date on which his juniors have been given the selection grade. However, the petitioner will get only the notional benefits till the date the petitioner filed this petition and from the date of filing this petition he shall get the actual benefits of the post. In case where the petitioner is found entitled for the selection grade then accordingly his pension and other retirementary benefits are to be revised. All these exercise has to be undertaken and completed within a period of four months from the date of receipt of writ of this order. Where the respondent No.1 decides the matter against the petitioner, liberty is granted to the petitioner for revival of this special civil application by filing a simple note. The special civil application and Rule stand disposed of accordingly with no order as to costs.

zgs/-